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13 Attorneys for Plaintiff Creative Integrated Systems, Inc.

14 **UNITED STATES DISTRICT COURT**
 15 **CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION**

CV10-2735 AHM(VBKx)

17 CREATIVE INTEGRATED
 18 SYSTEMS, INC.,

19 Plaintiff,

20 v.

21 NINTENDO OF AMERICA, INC.;
 22 NINTENDO CO., LTD.; MACRONIX
 AMERICA, INC.; and MACRONIX
 23 INTERNATIONAL CO., LTD.; and
 DOES 1-10 Inclusive,

24 Defendants.

CASE NO.

**COMPLAINT FOR
 INFRINGEMENT OF UNITED
 STATES PATENT NOS. 5,241,497
 AND 5,812,461**

JURY TRIAL DEMANDED

26 Plaintiff Creative Integrated Systems, Inc. ("Creative"), for its Complaint
 27 against Defendants Nintendo of America, Inc. ("Nintendo America"), Nintendo Co.,
 28 Ltd. ("Nintendo Japan"), Macronix America, Inc. ("Macronix America"), and

2010 APR 14 AM 4:12
 CLERK U.S. DISTRICT COURT
 CENTRAL DIST. OF CALIF.
 SANTA ANA

FILED

1 Macronix International Co., Ltd. (“Macronix Taiwan”) (collectively, “Defendants”)
2 hereby alleges as follows:

3 **JURISDICTION AND VENUE**

4 1. This is a civil action for infringement of United States Patent Nos.
5 5,241,497 (“the ‘497 Patent”) and 5,812,461 (“the ‘461 Patent”). This action is
6 based upon the Patent Laws of the United States, Title 35, United States Code,
7 including 35 U.S.C. §§ 271 and 281-285. Jurisdiction is conferred on this Court
8 pursuant to 28 U.S.C. §§ 1331 and 1338(a).

9 2. This Court has personal jurisdiction over the Defendants because each
10 of the Defendants has conducted business and sells its products in this judicial
11 district and, furthermore, each of the Defendants has committed acts of infringement
12 in this judicial district by using, advertising, marketing, offering for sale, and selling
13 products that infringe the ‘497 and ‘461 Patents in this judicial district; contributing
14 to the infringement of the ‘497 and ‘461 Patents by others in this judicial district;
15 and/or inducing others to infringe the ‘497 and ‘461 Patents in this judicial district.

16 3. Venue is proper in this District under 28 U.S.C. §§ 1391(b), (c), and/or
17 (d), and 28 U.S.C. § 1400(b), because, inter alia, each Defendant is subject to
18 personal jurisdiction in this District. In addition, Defendants Nintendo Japan and
19 Macronix Taiwan, as alien corporations, are deemed to reside in this District under
20 28 U.S.C. § 1391(d).

21 **THE PARTIES**

22 4. Creative is a corporation organized under the laws of the State of
23 California, having a principal place of business in this District at 1700 East Garry
24 Avenue, Suite 112, Santa Ana, California, 92705.

25 5. Creative is the owner of and has the right to sue for infringement of the
26 ‘497 and ‘461 Patents.

27 6. On information and belief, Defendant Nintendo Co., Ltd. (“Nintendo
28 Japan”) is a Japanese corporation, having a place of business at 11-1 Kamitoba

1 Hokotate-cho, Minami-ku, Kyoto, Japan. Nintendo Japan manufactures, markets,
2 and sells, under the Nintendo label, a variety of video and other electronic games
3 and entertainment systems for, among other things, importation, use, and/or sale into
4 the United States, including this District.

5 7. On information and belief, Defendant Nintendo of America, Inc.
6 (“Nintendo America”) is a corporation organized under the laws of the State of
7 Washington, having a place of business at 4820 150th Avenue NE, Redmond,
8 Washington, 98052. Nintendo America is a wholly-owned subsidiary of Nintendo
9 Japan. Nintendo America distributes, markets, and sells, under the Nintendo label, a
10 variety of video and other electronic games and entertainment systems.

11 8. On information and belief, Defendant Macronix International Co., Ltd.
12 (“Macronix Taiwan”) is a Taiwanese corporation, having a place of business at No.
13 16, Li-Hsin Rd., Hsinchu Science Park, Hsinchu, Taiwan. Macronix Taiwan
14 manufactures, markets, and sells, under the Macronix label, a variety of
15 semiconductor chips for, among other things, importation, use, and/or sale into the
16 United States, including this District.

17 9. On information and belief, Defendant Macronix America, Inc.
18 (“Macronix America”) is a corporation organized under the laws of the State of
19 California, having a place of business at 680 N. McCarthy Blvd., Milpitas,
20 California, 95035. Macronix America is a wholly-owned subsidiary of Macronix
21 Taiwan. Macronix America distributes, markets, and sells Macronix-labeled
22 semiconductor chips in the United States and in this District.

23 **BACKGROUND**

24 10. On August 31, 1993, the ‘497 Patent, entitled “VLSI Memory with
25 Increased Memory Access Speed, Increased Memory Cell Density and Decreased
26 Parasitic Capacitance” was duly and legally issued to Creative as assignee. The
27 named inventor of the ‘497 Patent is Mr. Komarek. A copy of the ‘497 Patent is
28 attached hereto as Exhibit A.

1 11. On September 22, 1998, the ‘461 Patent, entitled “Driver Circuit for
2 Addressing Core Memory and a Method for the Same,” was duly and legally issued
3 to Creative as assignee. The named inventors on the ‘461 Patent are Mr. Komarek,
4 Clarence W. Padgett, Robert D. Amneus, and Scott B. Tanner. A copy of the ‘461
5 Patent is attached hereto as Exhibit B.

6 12. In October 1988, James A. Komarek and Shiro Fujioka d/b/a California
7 Integrated Systems entered into a development and license agreement with Ricoh
8 Company, Ltd. (“Ricoh”), a Japanese Corporation, pursuant to which Mr. Komarek
9 was to design and develop various Read-Only-Memory (ROM) designs having,
10 among other things, fast memory access speed, high memory cell density, and
11 reduced parasitic capacitance. Mr. Komarek subsequently formed Creative
12 Integrated Systems, Inc. (the plaintiff in this action and the assignee/owner of the
13 ‘497 and ‘461 Patents). Mr. Komarek conceived the inventions claimed in the ‘497
14 Patent and, along with the other named inventors, the inventions claimed in the ‘461
15 Patent during this ROM design work.

16 13. Beginning in mid- to late 1990, ROM chips incorporating the
17 inventions of the ‘497 and ‘461 Patents were made by Ricoh and, upon information
18 and belief, sold to Nintendo Japan for use in Nintendo Japan’s products for
19 importation, use, and/or sale in the United States. Creative received royalty
20 payments for such ROM chip sales made by Ricoh for Nintendo Japan through
21 1998, at which time Nintendo Japan ceased purchasing ROM chips made by Ricoh
22 pursuant to its agreement with Creative.

23 14. Upon information and belief, Macronix Taiwan has made, used, offered
24 for sale, or sold ROM chips incorporating the inventions of the ‘497 and ‘461
25 Patents, without authority, which are imported into the United States to its wholly
26 owned subsidiary, Macronix America, for sale or offer for sale in the United States.

27 15. Upon information and belief, Macronix Taiwan has sold to and
28 continues to sell to Nintendo Japan, and Nintendo Japan has purchased and

1 continues to purchase from Macronix Taiwan, ROM chips incorporating the
2 inventions of the '497 and '461 Patents for use in Nintendo brand products that are
3 imported, used, and/or sold without authority in the United States, including
4 Nintendo brand products distributed to Nintendo America for sale in the United
5 States and/or directly sold by Nintendo America in the United States.

6 16. Upon information and belief, the infringing Macronix ROM devices
7 used by Nintendo Japan and Nintendo America include but are not limited to the
8 Macronix MX23L4005 ROM device, incorporated in Nintendo Wii game consoles,
9 and the Macronix MX23L51208 ROM device, incorporated in Nintendo DS game
10 cartridges.

11 17. Upon information and belief, Nintendo brand products incorporating
12 Macronix-manufactured ROM devices and embodying the invention claimed in the
13 '497 and '461 Patents have been and are currently being used, offered for sale, or
14 sold in the United States without authority by Nintendo America.

15 18. Upon information and belief, Macronix brand ROM chips embodying
16 the invention claimed in the '497 and '461 Patents were made, used, offered for
17 sale, sold and/or imported into the United States without authority.

18 19. Each of the Defendants knew or should have known their actions would
19 constitute actual infringement or would induce or contribute to actual infringement.

20 20. Each of the Defendants had actual knowledge, or should have known,
21 of the '497 and '461 Patents at the time they were committing the infringing
22 activities or inducing or contributing to the infringement, and consequently have
23 acted in an objectively reckless manner in disregard of the '497 and '461 Patents
24 such that these actions constitute willful infringement.

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FIRST CLAIM FOR RELIEF

**(INFRINGEMENT OF U.S. PATENT NO. 5,241,497
AGAINST ALL DEFENDANTS)**

21. Paragraphs 1 through 20 are incorporated by reference as if restated fully herein.

22. Each of the Defendants has infringed and is infringing at least one claim of the '497 Patent by making, using, offering for sale, selling, and/or importing into the United States, without authority, products embodying the invention claimed in the '497 Patent.

23. The infringing products include Macronix MX23L512 ROM devices as well as Macronix MX23L4005 ROM devices incorporated in Nintendo Wii game consoles and Macronix MX23L51208 ROM devices incorporated in Nintendo DS game cartridges.

24. Upon information and belief, Nintendo America directly infringes at least one claim of the '497 Patent by making, using, offering for sale, and/or selling in the United States, and/or importing into the United States, without authority, Macronix MX23L4005 ROM devices incorporated in Nintendo Wii game consoles and Macronix MX23L51208 ROM devices incorporated in Nintendo DS game cartridges.

25. Upon information and belief, Nintendo Japan is actively inducing or contributing to the direct infringement by other persons, including Nintendo America. Nintendo Japan had actual knowledge, or had reason to know, of the '497 Patent, at the time of the infringing acts, and further knew and intended that infringing products including Macronix MX23L4005 ROM devices incorporated in Nintendo Wii game consoles and Macronix MX23L51208 ROM devices incorporated in Nintendo DS game cartridges were being used, sold, or offered for sale in, or imported into, the United States by its wholly owned subsidiary, Nintendo America, without authority.

1 26. Upon information and belief, Macronix America directly infringes at
2 least one claim of the '497 Patent by making, using, offering for sale, and/or selling
3 in the United States, and/or importing into the United States, without authority,
4 ROM devices including but not limited to Macronix MX23L512 ROM devices.

5 27. Upon information and belief, Macronix Taiwan is actively inducing or
6 contributing to the direct infringement by other persons, including Nintendo
7 America and Macronix America. Macronix Taiwan had actual knowledge, or had
8 reason to know, of the '497 Patent, at the time of the infringing acts, and further
9 knew and intended that infringing products including Macronix MX23L4005 ROM
10 devices and Macronix MX23L51208 ROM devices were being used, sold, or
11 offered for sale in, or imported into, the United States without authority—including
12 but not limited to MX23L512 ROM devices being sold or offered for sale by
13 Macronix America in the United States and the Macronix MX23L4005 ROM
14 devices incorporated in Nintendo Wii game consoles and Macronix MX23L51208
15 ROM devices incorporated in Nintendo DS game cartridges being sold or offered
16 for sale by Nintendo America in the United States.

17 28. Upon information and belief, each of the Defendants are actively
18 inducing or contributing to the infringement of the '497 Patent by other persons –
19 specifically, customers, vendors, and partners of Defendants – who make, sell,
20 distribute or import into the United States the devices that embody or otherwise
21 practice one or more of the claims of the '497 Patent. Each of these customers,
22 vendors and partners of Defendants knew or had reason to know that the products
23 incorporating the patented technology would be sold, distributed, or imported into
24 the United States.

25 29. Each of the Defendants knew or had reason to know of the '497 Patent
26 at the time of the infringing acts, and further knew and intended that infringing
27 products including Macronix MX23L4005 ROM devices incorporated in Nintendo
28 Wii game consoles and Macronix MX23L51208 ROM devices incorporated in

1 Nintendo DS game cartridges were being used, sold, or offered for sale in or
2 imported into the United States without authority.

3 30. Creative has been and continues to be damaged by Defendants'
4 infringement of the '497 Patent.

5 31. Defendants' infringement of the '497 Patent has been and continues to
6 be willful.

7 32. As a direct and proximate result of Defendants' infringement of the
8 '497 Patent, Creative has been and continues to be damaged in an amount yet to be
9 determined.

10 **SECOND CLAIM FOR RELIEF**

11 **(INFRINGEMENT OF U.S. PATENT NO. 5,812,461**
12 **AGAINST ALL DEFENDANTS)**

13 33. Paragraphs 1 through 32 are incorporated by reference as if restated
14 fully herein.

15 34. Each of the Defendants has infringed and is infringing at least one
16 claim of the '461 Patent by making, using, offering for sale, selling, and/or
17 importing into the United States, without authority, products embodying the
18 invention claimed in the '461 Patent.

19 35. The infringing products include Macronix MX23L512 ROM devices as
20 well as Macronix MX23L4005 ROM devices incorporated in Nintendo Wii game
21 consoles and Macronix MX23L51208 ROM devices incorporated in Nintendo DS
22 game cartridges.

23 36. Upon information and belief, Nintendo America directly infringes at
24 least one claim of the '461 Patent by making, using, offering for sale, and/or selling
25 in the United States, and/or importing into the United States, without authority,
26 Macronix MX23L4005 ROM devices incorporated in Nintendo Wii game consoles
27 and Macronix MX23L51208 ROM devices incorporated in Nintendo DS game
28 cartridges.

1 37. Upon information and belief, Nintendo Japan is actively inducing or
2 contributing to the direct infringement by other persons, including Nintendo
3 America. Nintendo Japan had actual knowledge, or had reason to know, of the ‘461
4 Patent, at the time of the infringing acts, and further knew and intended that
5 infringing products including Macronix MX23L4005 ROM devices incorporated in
6 Nintendo Wii game consoles and Macronix MX23L51208 ROM devices
7 incorporated in Nintendo DS game cartridges were being used, sold, or offered for
8 sale in, or imported into, the United States by its wholly owned subsidiary, Nintendo
9 America, without authority.

10 38. Upon information and belief, Macronix America directly infringes at
11 least one claim of the ‘461 Patent by making, using, offering for sale, and/or selling
12 in the United States, and/or importing into the United States, without authority,
13 ROM devices including but not limited to Macronix MX23L512 ROM devices.

14 39. Upon information and belief, Macronix Taiwan is actively inducing or
15 contributing to the direct infringement by other persons, including Nintendo
16 America and Macronix America. Macronix Taiwan had actual knowledge, or had
17 reason to know, of the ‘461 Patent, at the time of the infringing acts, and further
18 knew and intended that infringing products including Macronix MX23L4005 ROM
19 devices and Macronix MX23L51208 ROM devices were being used, sold, or
20 offered for sale in, or imported into, the United States without authority—including
21 but not limited to MX23L512 ROM devices being sold or offered for sale by
22 Macronix America in the United States and the Macronix MX23L4005 ROM
23 devices incorporated in Nintendo Wii game consoles and Macronix MX23L51208
24 ROM devices incorporated in Nintendo DS game cartridges being sold or offered
25 for sale by Nintendo America in the United States.

26 40. On information and belief, each of the Defendants also are actively
27 inducing or contributing to the infringement of the ‘461 Patent by other persons –
28 specifically, customers, vendors and partners of Defendants – who make, sell,

1 distribute or import into the United States the devices that embody or otherwise
2 practice one or more of the claims of the '461 Patent. Each of these customers,
3 vendors and partners of Defendants knew or had reason to know that the products
4 incorporating the patented technology would be sold, distributed, or imported into
5 the United States.

6 41. Each of the Defendants knew or had reason to know of the '461 Patent
7 at the time of the infringing acts, and further knew and intended that infringing
8 products including Macronix MX23L4005 ROM devices incorporated in Nintendo
9 Wii game consoles and Macronix MX23L51208 ROM devices incorporated in
10 Nintendo DS game cartridges were being used, sold, or offered for sale in or
11 imported into the United States without authority.

12 42. Creative has been and continues to be damaged by Defendants'
13 infringements of the '461 Patent.

14 43. Defendants' infringement of the '461 Patent has been and continues to
15 be willful.

16 44. As a direct and proximate result of Defendants' infringement of the
17 '461 Patent, Creative has been and continues to be damaged in an amount yet to be
18 determined.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Creative prays for relief and judgment as follows:

21 A. That each Defendant directly, contributorily, and/or through
22 inducement infringed and continues to infringe the '497 and '461 Patents;

23 B. That Defendants' infringement of the '497 and '461 Patents has been,
24 and continues to be, willful;

25 C. That Creative be awarded all damages adequate to compensate it for the
26 infringements by each Defendant, such damages to be determined by a jury and, if
27 necessary to adequately compensate Creative for the infringement, an accounting of
28 all damages, and that all awarded damages be trebled pursuant to 35 U.S.C. § 284;

1 D. That Creative be awarded pre-judgment and post-judgment interest
2 pursuant to 35 U.S.C. § 284;

3 E. That this case be declared an exceptional case within the meaning of 35
4 U.S.C. § 285 and that Creative be awarded the attorneys' fees, costs, and expenses
5 incurred in prosecuting this action; and

6 F. That Creative be awarded such other and further relief as this Court
7 deems just and proper.

8
9 Dated: April 14, 2010

Respectfully submitted:

10 **BARNES AND THORNBURG LLP**
11 **TODD G. VARE**

12
13
14 By: 

Attorneys for Plaintiff Creative Integrated
Systems, Inc.

15
16
17 Dated: April 14, 2010

ZUBER & TAILLIEU LLP

18 **YURI MIKULKA**
19 **BENJAMIN C. DEMING**

20
21 By: 

22 Attorneys for Plaintiff Creative Integrated
23 Systems, Inc.

JURY DEMAND

Creative respectfully demands a jury trial on all issues and claims so triable.

Dated: April 14, 2010

Respectfully submitted:

BARNES AND THORNBURG LLP
TODD G. VARE

By: 

Attorneys for Plaintiff Creative Integrated
Systems, Inc.

Dated: April 14, 2010

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YURI MIKULKA
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